

STATE OF WASHINGTON  
GAMBLING COMMISSION

In the Matter of the Revocation of the	)	
Certification to Conduct Gambling Activities of:	)	NO. CR 2012-01559
	)	
Brian K. Hurst	)	<b>FINDINGS, CONCLUSIONS,</b>
Everett, Washington,	)	<b>DECISION, AND FINAL</b>
	)	<b>ORDER IN DEFAULT</b>
Class III Employee.	)	

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THE MATTER of the revocation of the certification to conduct gambling activities of Brian K. Hurst having come before the Commission on March 14, 2013, the Commission makes the following Findings of Fact, Conclusions of Law, and issues the following Decision and Order:

**FINDINGS OF FACT**

I.

The Washington State Gambling Commission issued Brian K. Hurst the following certification:<sup>1</sup>

Number 69-33837, authorizing Class III Employee activity with the Tulalip Resort and Casino.

The certification expires on April 22, 2013, and was issued subject to Brian K. Hurst's compliance with state gambling laws and rules, and the Tulalip Tribal/State Compact.

II.

On December 7, 2012, Director Rick Day issued administrative charges to Brian K. Hurst by certified and regular mail. The administrative charges notified Mr. Hurst that failure to respond would result in the entry of a default order revoking his certification. Mr. Hurst did not respond to the charges and waived his right to a hearing and pursuant to RCW 34.05.440, this final order is entered in default.

III.

**SUMMARY:**

Brian K. Hurst holds a Class III Certification issued by the Washington State Gambling Commission. Mr. Hurst worked at the Tulalip Casino as a Frontline Cashier. On August 9, 2012, the Tulalip Tribal Gaming Agency (TTGA) revoked Mr. Hurst's tribal license because he

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<sup>1</sup> Class III Employee certification is issued to employees working at tribal Casinos. The certification authorizes similar activities as the Card Room Employee (CRE) license issued to individuals working at commercial house-banked card rooms. By submitting a transfer form and fees, holders of a Class III Certification may convert their certification to a CRE license.

stole \$80 from a drawer located at the Poker Customer Point of Sale system.

#### FACTS:

- 1) A Washington State Gambling Commission Special Agent (agent) was assigned to Mr. Hurst's file to investigate if he continues to qualify for certification after having his tribal license revoked.
- 2) On October 1, 2012, the agent called Tauna Ward of the TTGA and asked her about Mr. Hurst's license revocation. Ms. Ward confirmed Mr. Hurst's license had been revoked and sent the agent supporting the documents.
- 3) On November 1, 2012, the agent reviewed the documents supplied by the TTGA. The TTGA Investigative Summary Report was completed by Tribal Gaming Inspector David Durham, and indicated the following:
  - Mr. Durham was notified on July 26, 2012, that Surveillance Observer Wendy Korr found during a review that Mr. Hurst took \$80 from his drawer on the Poker Customer Point of Sale (POS).<sup>2</sup> Mr. Durham reviewed the incident and found the following:
    - At approximately 3:55:15 hours on July 24, 2012, Mr. Hurst removes and counts out three \$20 bills. He then removes a \$10 bill and stacks it with the previously removed \$20 bills, which he was holding in his left hand. The denomination is determined based upon all Cashier drawers being set up in a standardized fashion and the fact that Mr. Hurst had incurred an \$80 shortage variance.
    - At approximately 3:55:35 hours, Mr. Hurst slides the till backwards in his drawer and reveals an additional bill lying on the bottom of the drawer. Mr. Hurst picks the revealed bill up from the drawer and holds it in his right hand, while still holding the previously removed \$70 in his left hand.
    - At approximately 3:55:53 hours, Mr. Hurst adds the bill from his right hand to the \$70 he is holding in his left hand and places the stack of bills (\$80) on to the bottom of the drawer in front of the till.
    - At approximately 4:03:51 hours, Mr. Hurst removes the \$80 cash from the front of the drawer, folds it twice, and creases it.
    - At approximately 4:03:59 hours, Mr. Hurst takes the now folded \$80 and places it against the side of the drawer and anchors it in place with the cash till.
    - At approximately 4:06:26 hours, Mr. Hurst opens the drawer after positioning

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<sup>2</sup> TGA has a separate Poker Cage where Poker players buy and redeem their chips. The cashiers inside the Poker Cage would be operating a Poker Point of Sale. The Poker Cage is part of the Cage Department, but located in the Poker Room.

his body between the drawer and the direct line of sight of Frontline Cashier Antonio Jefferson.

- At approximately 4:06:32 hours, Mr. Hurst removes the previously folded \$80 and cups it in his right hand.
  - At approximately 4:06:39 hours, Mr. Hurst reaches forward with his still-cupped right hand, removes his drawer key from the top of the counter, and places his right hand with the keys and the folded \$80 into his right front pants pocket. Mr. Hurst then steps towards the counter that Mr. Jefferson is working from, leans back against the counter, and appears to engage Mr. Jefferson in a conversation.
  - At approximately 4:06:55 hours, Mr. Hurst removes his right hand from his right front pants pocket. His hand is empty at the time.
  - At approximately 4:07:33 hours, Mr. Hurst reaches into his right front pants pocket with his right hand, removes the drawer keys, and throws them on the counter top.
  - Mr. Hurst is seen verifying his drawer and running the cash through the currency-counting machine. Mr. Hurst secures his cash and gaming cheque drawers.
  - At approximately 4:17:42 hours, Mr. Hurst departs the Poker Cage.
- 4) On July 26, 2012, Mr. Durham interviewed Mr. Hurst. Mr. Durham asked questions about whether an employee stealing from the casino should get a second chance. Mr. Hurst said, "Yeah, depending on what they stole or whatever." During the interview, Mr. Hurst denies taking any money from the casino. Mr. Durham asked, "So you're adamant you didn't take any money?" Mr. Hurst responded, "Absolutely." Mr. Hurst was willing to provide a written statement of that. Mr. Hurst was issued a Notice of Summary Suspension Pending Revocation and escorted from the gaming facility.
- 5) The Tulalip Resort Casino Surveillance Report documents how on July 24, 2012, Cashier Charles Hansen counted down the chip drawer and found \$75 in missing chips from the chip racks in addition to the \$5 Mr. Hurst recorded as the shortage when he went off shift. It indicated that Mr. Hurst was in the chip drawer several times throughout his shift where he reached into the cabinet and removed chips and/or rotated chip trays. The actions documented involving the chip drawer does not indicate Mr. Hurst stole any chips, but it does indicate he moved the chips around.
- 6) On July 30, 2012, the Tulalip Gaming Court for the Tulalip Reservation issued an "Order on Initial Review Hearing of Summary Suspension Pending Revocation," upholding the summary suspension pending a full appeal hearing.

- 7) On August 9, 2012, the Tulalip Tribal Gaming Agency issued a "Final Notice of Revocation" to Mr. Hurst.

## **VIOLATIONS:**

### **Section 5(c) of the Tulalip Tribe/State Compact**

The State Gaming Agency<sup>3</sup> may revoke, suspend or deny a State certification under the provisions of RCW 9.46.075, and rules promulgated there under, or for any reason or reasons it deems to be in the public interest. In addition, these reasons shall include, but shall not be limited to when a holder of certification:

(The following subsections apply.)

(i) Has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by chapter 9.46 RCW and any amendments thereto, or any rules adopted by the State Gaming Agency pursuant thereof, or any provision of a Tribal-State Compact;

(vi) Fails to prove, by clear and convincing evidence, that he is qualified in accordance to the provisions of this section;

(viii) Has had a Tribal license revoked or denied during the preceding twelve months.

### **RCW 9.46.075 Denying, suspending, or revoking an application, license or permit**

The commission may deny an application, or suspend or revoke any license or permit issued by it, for any reason or reasons, it deems to be in the public interest. These reasons shall include, but not be limited to, cases wherein the applicant or licensee, or any person with any interest therein: (The following subsections apply.)

(1) Has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by chapter 9.46 RCW and any amendments thereto, or any rules adopted by the commission pursuant thereto, or when a violation of any provision of chapter 9.46 RCW, or any commission rule, has occurred upon any premises occupied or operated by any such person or over which he or she has substantial control.

(8) Fails to prove, by clear and convincing evidence, that he is qualified in accordance with the provisions of this chapter.

### **WAC 230-03-085 Denying, suspending, or revoking an application, license or permit**

We may deny, suspend, or revoke any application, license or permit, when the applicant, licensee, or anyone holding a substantial interest in the applicant's or licensee's business or organization:

(The following subsections apply.)

(1) Commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075.

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<sup>3</sup> Washington State Gambling Commission, as referred to in the Tulalip Tribal/State Compact, Section 2 (p).

(8) Poses a threat to the effective regulation of gambling, or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling activities, as demonstrated by:

- (a) Prior activities; or
- (b) Criminal record; or
- (c) Reputation; or
- (d) Habits; or

**RCW 9.46.153(1) Applicants and licensees-Responsibilities and duties**

It shall be the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence the necessary qualifications for licensure of each person required to be qualified under this chapter, as well as the qualifications of the facility in which the licensed activity will be conducted.

Mr. Hurst's actions establish that he poses a threat to the effective regulation of gaming, and he has failed to establish by clear and convincing evidence the necessary qualifications for certification under RCW 9.46.153(1). Therefore, under the Tulalip Tribal/State Compact, RCW 9.46.075(1), and (8), and WAC 230-03-085(1) and (8), grounds exist to revoke Brian K. Hurst's certification.

IV.

**CONCLUSIONS OF LAW**

The circumstances specified in the Findings of Facts in section III above constitute grounds for the revocation of Brian K. Hurst's certification to conduct gambling activities under the authority of RCW 9.46.075, and WAC 230-03-085.

**DECISION AND ORDER**

The Washington State Gambling Commission HEREBY ORDERS: Brian K. Hurst's certification to conduct gambling activities is REVOKED.

DATED this 14th day of March, 2013.

  
JOHN ELLIS, Chair

  
KELSEY GRAY

  
MIKE AMOS

  
MARGARITA PRENTICE

PRESENTED BY:



Amy B. Hunter, WSBA# 23773  
Administrator, Communications and Legal Division  
Washington State Gambling Commission

**NOTICE:** RCW 34.05.440(3) provides that within seven (7) days after service of a default order the party against whom it was entered may file a written motion requesting that the order be vacated and stating the grounds relied upon.

**NOTICE:** Petition for Judicial Review

You have the right to appeal this Final Order to Superior Court, pursuant to the Petition for Judicial Review provisions of RCW 34.05.542. Any Petition for Judicial Review of this Final Order must be filed with the court and also served upon both the Commission and the Office of the Attorney General within thirty (30) days after the date this Final Order is served upon you.

WAC 230-17-040(3) requires that motions be served on the parties listed below:

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